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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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10 In re Allstate Insurance Company } MDL No. 1541 (2:03-md-1541)
11 Fair Labor Standards Act Litigation } ALL CASES
12

13 ORDER
14

15 Pending before the Court is Defendant's Motion to Determine Basis on
16 Which Plaintiffs Should be Permitted to Dismiss Claims (doc. #199). Having
17 considered the parties' memoranda filed in connection with the defendants'
18 motion, as well as the Parties' Joint Memorandum in Response to Court Order of
19 January 30, 2008 (doc. #211), the Court finds that any plaintiff, whether a named
20 plaintiff or an opt-in plaintiff, wishing to withdraw his or her consent-to-join form,
21 thereby in effect voluntarily dismissing his or her federal Fair Labor Standards Act
22 claim, shall be permitted to do so only in the conditional manner established
23 herein.

24 Inasmuch as the Court has already entered one summary judgment order
25 in this MDL action, the Court initially notes that any request by any plaintiff
26 seeking to withdraw from this action will be construed, and resolved, as a motion
27 for voluntary dismissal pursuant to Fed.R.Civ.P. 41(a)(2).
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1 Rule 41(a)(2) permits the Court to grant a voluntary dismissal under the
2 current circumstances “on terms that the court considers just.” The Court is
3 unpersuaded by the plaintiffs’ contention that any subsequent voluntary dismissal
4 should simply be unconditional and without prejudice. While a dismissal under
5 Rule 41(a)(2) is normally without prejudice, such a dismissal is not appropriate if
6 the defendants will “suffer clear legal prejudice, other than the prospect of a
7 subsequent suit on the same facts.” Phillips v. Illinois Central Gulf Railroad, 874
8 F.2d 984, 986 (9th Cir. 1996). In the Ninth Circuit, “legal prejudice” means
9 “prejudice to some legal interest, some legal claim, some legal argument.”
10 Wetlands Water District v. United States, 100 F.3d 94, 97 (9th Cir.1996). In
11 determining whether legal prejudice exists, the Court considers it appropriate to
12 consider the present stage of this litigation. Phillips USA, Inc. v. Allflex USA, Inc.,
13 77 F.3d 354, 358 (10th Cir. 1996).

14 The Court deems this action to be to a significant degree in a post-
15 summary judgment procedural posture. While the plaintiffs are correct that the
16 Court’s summary judgment order (doc. #188), 2007 WL 2274802 (D.Ariz. Aug. 7,
17 2007), technically only granted summary judgment against the named plaintiffs in
18 the Gaglione v. Allstate Insurance Company member case, the consequences of
19 that order are more far-reaching given that the order resolved some significant
20 substantive issues that effect the entirety of this MDL action, e.g. that at least
21 Allstate property and casualty adjusters are administrative workers and not
22 production workers. It is clear from the plaintiffs’ response to the defendants’
23 motion that a major motivation for a plaintiff to now withdraw from this action is to
24 obtain more favorable rulings in a new action in some other court. While legal
25 prejudice for purposes of Rule 41(a)(2) will not result from a defendant having to
26 defend in another forum or from a plaintiff gaining a tactical advantage from a
27 voluntary dismissal, Smith v. Lenches, 263 F.3d 972, 976 (9th Cir.2001), an
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1 unconditional dismissal without prejudice is not appropriate if the purpose of the
2 dismissal is to avoid the consequences of a summary judgment ruling. Phillips
3 USA, Inc. v. Allflex USA, Inc., 77 F.3d at 358 (“We agree with the district court
4 that a party should not be permitted to avoid an adverse decision on a dispositive
5 motion by dismissing a claim without prejudice.”)

6 The Court also considers it appropriate to consider the fact that this is an
7 MDL action in determining whether an unconditional dismissal without prejudice
8 of a withdrawing plaintiff’s FLSA claim filed pursuant to 29 U.S.C. § 216(b) should
9 be allowed. Permitting a plaintiff to withdraw from this action in order to
10 commence a new federal FLSA collective action would only defeat the purpose
11 behind the institution of this MDL action. Furthermore, as the defendants point
12 out, it is more likely than not that any refiled FLSA collective action by one of the
13 current plaintiffs in another federal court would ultimately be determined by the
14 Judicial Panel on Multidistrict Litigation to be a tag-along case to this MDL action,
15 resulting in nothing more than a waste of scarce judicial resources.

16 The Court, in the exercise of its broad discretion, thus concludes that the
17 only manner of dismissal that would not cause legal prejudice to the defendants
18 is a conditional dismissal that forbids any dismissing plaintiff from reasserting in
19 another federal suit any FLSA collective claim for overtime pay that is resolvable
20 in this action. *Cf. Smith v. Lenches*, 263 F.3d at 976 (“That the district court here
21 dismissed, with prejudice, the federal claims so that they cannot be reasserted in
22 another federal suit only strengthens our conclusion that the dismissal [of the
23 state law claims without prejudice] caused no legal prejudice and was not an
24 abuse of discretion.”)

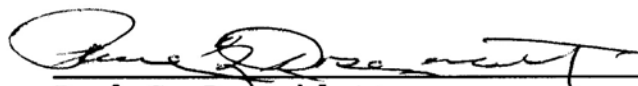
25 While the plaintiffs argue in the Parties’ Joint Memorandum that in order for
26 a conditional dismissal to be fair to them the Court must toll the statute of
27 limitations on any state law claims that a withdrawing plaintiff might have, the
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1 Court disagrees. As the defendants correctly point out, this action involves only
2 federal FLSA claims and the mere pendency of this action has never prevented
3 any plaintiff from pursuing any state court remedy that he or she may have had.
4 It is not for this Court to foreclose the defendants from raising any appropriate
5 statute of limitations defense should a withdrawing plaintiff subsequently
6 commence a state law overtime pay action. The Court will also not foreclose the
7 defendants from raising any appropriate statute of limitations defense should any
8 withdrawing plaintiff subsequently file an individual overtime pay claim under the
9 FLSA. Therefore,

10 IT IS ORDERED that Defendant's Motion to Determine Basis on Which
11 Plaintiffs Should be Permitted to Dismiss Claims (doc. #199) is granted to the
12 extent that any named or opt-in plaintiff hereinafter filing a motion for voluntary
13 dismissal pursuant to Fed.R.Civ.P. 41(a)(2) shall be permitted to withdraw from
14 this action only upon the condition that he or she shall be barred from asserting
15 as a member of a collective action any claim for overtime pay he or she might
16 have against any defendant herein under the Fair Labor Standards Act, 29 U.S.C.
17 § 201, *et seq.*, if that FLSA claim can be litigated as a part of this MDL action.

18 IT IS FURTHER ORDERED that the parties, in accordance with the parties'
19 Joint Report to Court Re Case Management/Status Conference (doc. #193), shall
20 file with the Court no later than August 11, 2008, a jointly prepared proposed form
21 of Order to Show Cause and Notice to the remaining named and opt-in plaintiffs
22 regarding their continued participation in this MDL action.

23 DATED this 14th day of July, 2008.

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27 Paul G. Rosenblatt
28 United States District Judge